

MUSICK, PEELER & GARRETT LLP

624 South Grand Avenue, Suite 2000
Los Angeles, California 90017-3383
Telephone (213) 629-7600
Facsimile (213) 624-1376

William A. Bossen (State Bar No. 131438)

w.bossen@musickpeeler.com

Jacqueline A. Marcott (State Bar No. 305628)

j.marcott@musickpeeler.com

Attorneys for Defendants MARTEN TRANSPORT SERVICES, LTD. and
MARTEN TRANSPORT, LTD.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

MOAWIAH ALBALAWNEH,

Plaintiff,

vs.

DUSTIN SCOTT STIPEK; MARTEN
TRANSPORT SERVICES, LTD.;
MARTEN TRANSPORT, LTD.; and
DOES 1-50, INCLUSIVE,

Defendants.

Case No. 5:21-cv-8633

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §
1441(b) [DIVERSITY
JURISDICTION]**

*[Filed and Served Concurrently with
Civil Case Cover Sheet, Declaration of
Jacqueline A. Marcott, Notice of
Interested Parties, and Certificate of
Service]*

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA, AND TO PLAINTIFF AND HIS
ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that Defendants MARTEN TRANSPORT
SERVICES, LTD. and MARTEN TRANSPORT, LTD. hereby remove the above-
entitled action from the Superior Court of the State of California for the County of
Riverside, Case No. CVRI2104283, to the United States District Court, Central
District of California – Eastern Division, pursuant to 28 U.S.C. §§ 1332 and 1441, *et*
seq. As set forth below, removal is proper based on diversity jurisdiction.

1 **I. FILING AND SERVICES OF THE COMPLAINT**

2 1. On or about September 21, 2021, Plaintiff MOAWIAH
3 ALBALAWNEH filed in the Superior Court of the State of California, County of
4 Riverside, the civil action bearing the title *Moawiah Albalawneh v. Dustin Scott*
5 *Stipek, Marten Transport Services, Ltd., Marten Transport, Ltd., and Does 1-50*,
6 bearing Case No. CVRI2104283 in the records and files of that Court (“State Court
7 Action”). A copy of the online docket for this matter is attached hereto as Exhibit
8 “A.” Copies of all pleadings obtainable for this matter, including the Complaint, are
9 attached hereto as Exhibit “B.”

10 2. Defendant MARTEN TRANSPORT SERVICES, LTD. was first
11 served with the Complaint in this action on October 15, 2021. Declaration of
12 Jacqueline A. Marcott filed concurrently herewith (“Marcott Dec.”), ¶ 2; Exhibit 1
13 thereto.

14 3. Defendant MARTEN TRANSPORT, LTD. was first served with the
15 Complaint in this action on October 15, 2021. Marcott Dec., ¶ 3; Exhibit 2 thereto.

16 **REMOVAL JURISDICTION**

17 4. This action is being removed to Federal Court on the basis of Federal
18 Diversity Jurisdiction under the provisions of 28 U.S.C. § 1332, and is one which
19 may be removed to this Court by Defendants MARTEN TRANSPORT SERVICES,
20 LTD. and MARTEN TRANSPORT, LTD. pursuant to the provisions of 28 U.S.C. §
21 1441(b) in that it is a civil action wherein the matter in controversy exceeds the sum
22 of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs, and is
23 between citizens of different states.

24 **CITIZENSHIP**

25 5. Defendant DUSTIN SCOTT STIPEK is now, and was at the time the
26 State Court Action was filed, a citizen of the State of Indiana such that he is
27 domiciled in the State of Indiana. Marcott Dec., ¶ 4. Moreover, Defendant
28 DUSTIN SCOTT STIPEK consents to the removal of the State Court Action to the

1 United States District Court for the Central District of California – Eastern Division,
 2 as well as the subsequent transfer of the State Court Action to the Southern District
 3 of Indiana. Marcott Dec., ¶ 4.

4 6. Defendant MARTEN TRANSPORT SERVICES, LTD. is now, and
 5 was at the time the State Court Action was filed, a corporation organized and
 6 existing under the laws of the State of Delaware, with its principal place of business
 7 in Wisconsin. Marcott Dec., ¶ 5; Exhibit 3 thereto.

8 7. Defendant MARTEN TRANSPORT, LTD. is now, and was at the time
 9 the State Court Action was filed, a corporation organized and existing under the
 10 laws of the State of Delaware, with its principal place of business in Wisconsin.
 11 Marcott Dec., ¶ 6; Exhibit 4 thereto.

12 8. Plaintiff MOAWIAH ALBALAWNEH is now, and was at the time the
 13 State Court Action was filed, a citizen of the State of California such that he is
 14 domiciled in the State of California. Marcott Dec., ¶ 7.

15 9. None of the defendants in the State Court Action are citizens of
 16 California.

17 AMOUNT IN CONTROVERSY

18 10. In this civil action between citizens of different states, the matter in
 19 controversy exceeds the sum of \$75,000.

20 11. Plaintiff MOAWIAH ALBALAWNEH alleges in his Complaint that,
 21 on December 31, 2019 at approximately 7:03 a.m., he was parked at the Pilot Travel
 22 Center semi-truck parking lot located at 2630 North 600 West, in the city of
 23 Greenfield, in the State of Indiana. At that time, Plaintiff MOAWIAH
 24 ALBALAWNEH was in the sleeper compartment of his semi-truck parked next to
 25 another truck driven by Defendant DUSTIN SCOTT STIPEK that had an attached
 26 trailer owned by Defendants MARTEN TRANSPORT SERVICES, LTD. and
 27 MARTEN TRANSPORT, LTD. Defendant DUSTIN SCOTT STIPEK then began
 28 maneuvering out of the Pilot parking lot and, as he was doing so, the back right of

1 Defendants MARTEN TRANSPORT SERVICES, LTD. and MARTEN
 2 TRANSPORT, LTD.’S trailer struck against Plaintiff MOAWIAH
 3 ALBALAWNEH’S truck, waking him up. Plaintiff MOAWIAH ALBALAWNEH,
 4 then visibly shaken, promptly got out of his sleeper compartment and attempted to
 5 get Defendant DUSTIN SCOTT STIPEK’S attention. Plaintiff MOAWIAH
 6 ALBALAWNEH further alleges that Defendant DUSTIN SCOTT STIPEK then
 7 backed up his semi-truck, slamming Defendants MARTEN TRANSPORT
 8 SERVICES, LTD. and MARTEN TRANSPORT, LTD.’S trailer directly into
 9 Plaintiff MOAWIAH ALBALAWNEH, causing him to be thrown to the ground.
 10 Plaintiff MOAWIAH ALBALAWNEH further alleges that he then got up and
 11 pursued Defendant DUSTIN SCOTT STIPEK on foot. However, according to
 12 Plaintiff MOAWIAH ALBALAWNEH, Defendant DUSTIN SCOTT STIPEK
 13 proceeded to flee the scene, leaving Plaintiff MOAWIAH ALBALAWNEH alone
 14 and clearly injured. Plaintiff MOAWIAH ALBALAWNEH claims to have suffered
 15 physical injuries and emotional distress as a result of this incident, as well as
 16 damages including, but not limited to, past and future lost income and benefits, as
 17 well as emotional distress, including humiliation, mental anguish and physical
 18 distress, and injury to mind and body. Complaint, ¶¶ 16-17, 28-29, 37-38.
 19 Although not specifically plead, it is facially apparent from the Complaint that the
 20 amount in controversy in this action is in excess of \$75,000. *Marcott Dec.*, ¶ 8; see
 21 *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999) (finding it “facially
 22 apparent” from the Complaint that the amount in controversy is satisfied because
 23 “based on a tort theory of recovery, appellant alleges damages for property, travel
 24 expenses, an emergency ambulance trip, a six day stay in the hospital, pain and
 25 suffering, humiliation, and her temporary inability to do housework after the
 26 hospitalization.”); *White v. FCI USA, Inc.*, 319 F.3d 672, 675 (5th Cir. 2003) (In a
 27 wrongful termination action, “The district court concluded it was ‘more probable
 28 than not’ that the lengthy list of compensatory and punitive damages sought by

1 [plaintiff], when combined with attorney's fees, would exceed \$75,000.'").

2 **TIMELINESS OF REMOVAL**

3 12. This action was filed on September 21, 2021. Defendant MARTEN
4 TRANSPORT SERVICES, LTD. was served with the Complaint on October 15,
5 2021, while Defendant MARTEN TRANSPORT, LTD. was served with the
6 Complaint on October 15, 2021. Marcott Dec., ¶¶ 2-3; Exhibits 1 and 2. As
7 Defendants MARTEN TRANSPORT SERVICES, LTD. and MARTEN
8 TRANSPORT, LTD. have filed this Notice of Removal within thirty (30) days after
9 the date on which they first received notice that this civil action was removable, this
10 removal is timely.

11 **VENUE**

12 13. The United States District Court for the Central District of California –
13 Eastern Division is a proper venue in that: (1) the action being removed was filed in
14 the Superior Court of the State of California, County of Riverside; and (2) the
15 incident that led to the underlying lawsuit occurred in the State of Indiana. Exhibit
16 “B.” Moreover, following the removal of the State Court Action to the Central
17 District of California – Eastern Division, Defendants MARTEN TRANSPORT
18 SERVICES, LTD. and MARTEN TRANSPORT, LTD. intend to seek a transfer of
19 the State Court Action to the more appropriate venue of the Southern District of
20 Indiana. Marcott Dec., ¶ 10.

21 **STATE COURT DOCUMENTS**

22 14. As noted above, attached hereto and marked as Exhibit “A” are true
23 and correct copies of all pleadings, processes, notices and orders filed in the
24 Superior Court of the State of California, County of Riverside and which have been
25 served upon Defendants MARTEN TRANSPORT SERVICES, LTD. and
26 MARTEN TRANSPORT, LTD. and which Defendants MARTEN TRANSPORT
27 SERVICES, LTD. and MARTEN TRANSPORT, LTD. have obtained from the
28 Superior Court website.

1 **NOTICE OF FILING IN THE SUPERIOR COURT**

2 15. A written Notice of Filing of this Notice of Removal will be filed with
3 the Clerk of the Superior Court of the State of California, County of Riverside, and
4 will serve a copy on Plaintiff MOAWIAH ALBALAWNEH, as required by 28
5 U.S.C. § 1446(b).

6 **CIVIL COVER SHEET, OTHER DOCUMENTS AND FEE**

7 16. Accompanying this Notice of Removal are a Civil Cover Sheet, Notice
8 of Interested Parties, Declaration, Certificate of Services, and filing fee paid to the
9 Court.

10 **PRAYER**

11 WHEREFORE, Defendants MARTEN TRANSPORT SERVICES, LTD. and
12 MARTEN TRANSPORT, LTD. respectfully request that this action be removed to
13 the United States District Court in and for the Central District of California –
14 Eastern Division, from the Superior Court of the State of California, County of
15 Riverside.

16
17 DATED: November 2, 2021

MUSICK, PEELER & GARRETT LLP

18
19
20 By: 

William A. Bossen

Jacqueline A. Marcott

Attorneys for Defendants MARTEN
TRANSPORT SERVICES, LTD. and
MARTEN TRANSPORT, LTD.